

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

MICHAEL CHAVEZ,

Plaintiff,

CIVIL ACTION NO.: 1:20-CV-20-921

v.

ADVANCED MARKETING &  
PROCESSING, INC.,

Defendant.

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**NOTICE OF REMOVAL**

Defendant Advanced Marketing & Processing, Inc. d/b/a Protect My Car (“Protect My Car” or “Defendant”), pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a), and 1446, with full reservation of all defenses, hereby removes this action from the Justice Court, Precinct 2, Travis County, Texas, to the United States District Court for the Western District of Texas, Austin Division. In support of this Notice of Removal, Protect My Car states as follows:

**I. Background**

1. On August 25, 2020, Plaintiff Michael Chavez (“Chavez”) filed a Complaint in the Justice Court, Precinct 2, Travis County, Texas, Case No. J2-CV-20-2691 (the “Complaint”) against Protect My Car. A true and correct copy of the Complaint and other papers served upon Protect My Car is attached hereto as **Exhibit “A”**.

2. The suit arises from “impermissible communications” and alleged “violations” of 47 U.S.C. § 227(b)(1)(A)(iii) of the Telephone Consumer Protection Act (“TCPA”) and Tex. Bus. & Com. Code § 305.053.

3. On August 27, 2020, Protect My Car was served via its registered agent with a copy of the Complaint.

4. Pursuant to the Citation accompanying the Complaint, Protect My Car must respond to the Complaint within fourteen (14) days after service.

5. Protect My Car now timely removes this action to this Court.

## **II. Basis for Jurisdiction**

6. This Court has jurisdiction over this removed action pursuant to 28 U.S.C. §§ 1331 and 1441(a). This action could have been originally filed in this Court pursuant to 28 U.S.C. § 1331, as this Court has original jurisdiction over all civil actions arising under the “Constitution, laws, or treaties of the United States.”

7. Chavez’s Complaint asserts violations of a federal law, namely the TCPA. *See generally* Ex. A. The Supreme Court of the United States in *Mims v. Arrow Financial Services LLC*, 132 S. Ct. 740, 747-53 (2012), addressed the issue of whether the federal district courts have jurisdiction over TCPA claims, holding that such a claim is, in fact, one that “arises under” the laws of the United States. As such, this Court has federal question jurisdiction over this matter.

8. Indeed, pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” Thus, this Court has federal question jurisdiction.

9. Based upon the foregoing, this Court has federal question jurisdiction over this action and venue is proper in this Court for purposes of removal.

10. The Court also has supplemental jurisdiction over any claim under Tex. Bus. & Com. Code Tex. § 305.053, pursuant to 28 U.S.C. § 1367, as any such claim is so related to the TCPA claim over which the Court has original jurisdiction that it forms part of the same case or controversy under Article III of the United States Constitution.

### **III. Rule of Unanimity**

11. The requirement that all Defendants consent to and join a notice of removal in order for it to be effective is referred to as the “rule of unanimity.” The “rule of unanimity” has been codified as 28 U.S.C. § 1446(b)(2)(A), which provides that “[w]hen a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.”

12. Protect My Car is the only Defendant in this action and files this Notice of Removal. Accordingly, the rule of unanimity is satisfied.

### **IV. Notice Given**

13. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be promptly served on Chavez, and a copy will be promptly filed with the Clerk of the Justice Court, Precinct 2, Travis County, Texas.

### **V. Removal is Timely Filed**

14. This Notice has been timely filed within thirty (30) days of Protect My Car’s being served with the Complaint on August 27, 2020, as required by 28 U.S.C. § 1446(b)(2).

### **VI. Pleadings and Process**

15. As required by 28 U.S.C. § 1446(a), copies of all state court process and pleadings actually served upon Protect My Car are attached to this Notice of Removal as Exhibit A.

**VII. Venue**

16. Pursuant to 28 U.S.C. § 1441(a), venue in this District Court is proper for purposes of removal because this action is currently pending in the Justice Court, Precinct 2, Travis County, Texas, which is in the same District as the United States District Court for the Western District of Texas, Austin Division.

**VIII. Non-Waiver of Defenses**

17. Nothing in this Notice shall be interpreted as a waiver or relinquishment of Protect My Car's rights to assert any defense or affirmative matter, including, without limitation, motions to dismiss pursuant to Federal Rule of Civil Procedure 12.

ACCORDINGLY, pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a), and 1446, this Court has jurisdiction over this matter, and Defendant Advanced Marketing & Processing, Inc. d/b/a Protect My Car hereby removes this action from the Justice Court, Precinct 2, Travis County, Texas, to this Court.

Dated: September 4, 2020

Respectfully submitted and Signed pursuant to  
Federal Rule of Civil Procedure 11,

By: /s/ Ryan C. Bueche  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by email and U.S. first class mail on this 4<sup>th</sup> day of September, 2020, to the Plaintiff at the following:

Michael Chavez  
10430 Morado Circle, Apt. 2136  
Austin, TX 78759  
[mchav022@ucr.edu](mailto:mchav022@ucr.edu)

/s/ Ryan C. Bueche  
Ryan C. Bueche, Esq.